

IN THE SUPERIOR COURT
OF
COCHISE COUNTY, STATE OF ARIZONA

Date: November 15, 2019

JUDGE MICHAEL D. PETERSON

In re the Marriage of:

ROGER CONTRERAS,

Petitioner,

and

NANCY BOURKE,

Respondent.

Case No. **DO-2009-01390**

**ORDER RE: MOTION TO INTERVENE FOR
THE LIMITED PURPOSE OF UNSEALING
COURT RECORDS AND THIRD AMENDED
ORDER RE: PUBLICATION TO THIRD
PARTIES OF COURT PROCEEDINGS
INVOLVING X.C., A MINOR CHILD**

The Court is in receipt of Intervenor David Morgan's *Motion to Intervene for the Limited Purpose of Unsealing Court Records* filed on or about September 13, 2019. A hearing was held on September 18, 2019. The Court finds, and orders, as follows:

- (1) The Motion to Intervene for the Limited Purpose of Unsealing Court Records to permit Intervenor ("Intervenor") David Morgan to appear in these proceedings for the limited purpose of unsealing court records is granted.
- (2) Intervenor's repeated assertion that the Court ordered that the courtroom be closed pursuant to Arizona Rule of Family Law Procedure 13(b) is simply not true. The Court did not close the courtroom at the hearing on August 9, 2019. Therefore, all requested relief in connection with the "closing of the courtroom" is denied.
- (3) Pursuant to Arizona Rule of Family Law Procedure 17(c), the Court finds the following:

(c) Grounds to Seal or Redact; Written Findings Required. The court may order the court files and records, or any part thereof, to be sealed or redacted, provided the court enters written findings of fact and conclusions that the specific sealing or redaction is justified. The conclusions must include the following:

- (1) there exists an overriding interest that overcomes the right of public access to the record;

The parties are the natural parents of one (1) minor child, namely Xander R. Contreras, born on March 25, 2010. The parties are formerly husband and wife whose marriage was dissolved by an Amended Decree of Dissolution of Marriage entered on or about May 12, 2011. Since the entry of the Amended Decree of Dissolution, the parties have engaged in almost non-stop, ferociously contested litigation with a seemingly endless number of motions, petitions, complaints, requests for contempt, allegations of misconduct and lack of compliance with prior orders/applicable statutes and rules. This litigation finally culminated in a three (3) day bench trial held from August 7-9, 2019 in the Cochise County Superior Court. A final Order has been entered which finally brings this litigation to an end. There was overwhelming evidence presented at the trial that mother suffers from profound, debilitating, mental health issues. Those mental health challenges cloud her judgment and thought process. On numerous occasions throughout these proceedings, mother began shrieking, crying hysterically and otherwise comporting herself in a very inappropriate and unprofessional manner. She left the courtroom on more than one occasion during closing arguments and sat in the back crying uncontrollably and acting out so loudly that it was difficult to hear others who were speaking. Following the hearing in front of another judge on October 5, 2018, Ms. Bourke was found lying in front of the elevators at the Pima County Superior Court sobbing so loudly that security was called. She continued to cry “uncontrollably” after security arrived. Her erratic behavior continued for over an hour until she finally composed herself.

The parties have ferociously litigated matters almost non-stop since Xander was literally just months old. Mother’s mental health has been at issue for years. For instance, Judge Corsaro (in March 2013) expressed grave concerns about mother’s behavior, including “her melt-down” in court and her “outrageous and inappropriate conduct in the presence of her son.” The evidence presented over the course of these proceedings overwhelmingly shows that mother currently suffers from incapacitating mental health challenges which have a directly negative impact upon the parties’ minor child. It would be impossible to separate the evidence of mother’s mental health issues from any honest reporting of this case. It is absolutely not in Xander’s best interest that his mother’s mental health challenges be publicized.

Furthermore, the level of hostility between the parties is unprecedented in this Court’s experience of over 20 years of family law practice, as a judge, attorney and mediator in hundreds of contested cases. The parties are hyper-aggressive individuals who have used the court system to wage war upon the other. There is no doubt that if the parties are able to continue their fight in the media, they will do so. This subjects Xander to continued and unnecessary conflict that is not in his best interest.

Based upon statements made by Xander’s GAL at the final trial, the Court believes that she is in agreement that the order prohibiting publication to third parties of these proceedings is in Xander’s best interest.

The Court suspects that mother is attempting to publicize these proceedings with the intent of placing public pressure on the Court to rule in her favor (*see* pleading filed on or about September 16, 2019, in which mother states that the order prohibiting publication “stifle[s] oversight of the court through an independent media”). That argument is improper and inappropriate. As a practicing attorney, mother is well aware that judges are to make decisions without regard to public clamor or fear of criticism or reprisal (*see* Code of Judicial Administration, Rule 2.4). Mother’s continued efforts to seek attention for herself by utilizing the media and prolonging this litigation are inappropriate and manifestly contrary to Xander’s best interests.

(2) the overriding interest supports sealing or redacting the record;

Xander is nine (9) years old. Cochise County is a relatively small county. By all accounts, mother and father believe that Xander is well-known and well-liked. It is incontrovertible that it is well-known who his parents are. References to Xander's mother and/or father, given their high-profile status, in a public forum (even if Xander's name is not published), is absolutely not in Xander's best interests. Any honest reporting of these proceedings would necessarily include mother's significant mental health challenges as well as the level of hostility that has existed (and continues to exist) between the parties. The overriding interest of the wellbeing of a small child whose mother suffers from significant mental health challenges and who is caught between two combative parents strongly supports the sealing of the record.

(3) a substantial probability exists that the overriding interest will be prejudiced if the record is not sealed or redacted;

There is a substantial probability that the overriding interest will be prejudiced if the record is not sealed. Should publication of these proceedings take place, Xander's mother's significant mental health challenges will be made public. Further, the extreme discord between his parents will also be made public. Given the intense level of hostility between the parties, it is certain that the parties will use the media to continue to attack one another, thereby prolonging the conflict. Publication to third parties of these proceedings is absolutely not in Xander's best interest.

(4) the proposed sealing or redaction is narrowly tailored; and

The order prohibiting communication by the parties to third parties is narrowly tailored and focuses only on [REDACTED] and his best interests. If the parties were litigating any other matters aside from legal decision-making and parenting time that pertain to [REDACTED], the Court would not attempt to restrict communication by the parties to others or publication of matters involving this case. As it is, the media is still welcome to truthfully publish anything they wish, for instance, regarding their disappointment in the undersigned's performance in this case or father's candidacy for judicial office.

(5) no less restrictive means exist to achieve the overriding interest.

The Court's Order does not prevent media reports regarding father or mother with respect to any matter other than these proceedings because these proceedings only involve the parties' minor child. Due to the intensely hostile litigation and mother's significant mental health challenges, it is necessary to seal the record. Simply redacting Xander's name is inadequate to protect the overriding interest of his young child's best interests.

The Court recognizes the importance of the argument made by Intervenor with respect to "prior restraint" of publication by the media. The Court possesses the power to prohibit the parties from communicating, publicizing, and/or otherwise disseminating to any person or entity any matter pertaining to this case, and has made findings consistent with Arizona law which justify this prohibition. While the

distinction between “all persons or entities” and “the parties” may appear infinitesimally small, there is an important difference. It is not the business of the court to determine what the media wishes to cover. Further, family proceedings are presumptively open to the public. This Court’s practice has consistently been to welcome media coverage – for better or worse - in every other case over which it has presided over in more than four years. This case is fundamentally different than every other case that the Court has seen. Mother does not possess the capacity to act rationally and in her own best interest, much less the minor child’s best interest. Ironically, the Court would gladly welcome independent review of these proceedings. However, publication of these proceedings would be manifestly contrary to the overriding interest of protection of Xander.

ON THE BASIS OF THE FOREGOING, IT IS ORDERED:

- (1) The prior Order sealing entire file, transcripts, pleadings, minute entries, etc. in this case is affirmed.
- (2) Modifying the prior Second Amended Order Re: Publication to Third Parties, as follows:

The parties shall not communicate with any third party, nor shall they publish, publicize and/or otherwise disseminate in any forum by any medium (including but not limited to the Internet) including but not limited to newspapers (either paper or electronic), blogs, Twitter, Facebook, Instagram and/or any other social media platforms any matter pertaining to Cochise County Superior Court No. DO-2009-01390 without an express written order from the Court.

DONE IN OPEN COURT this 15th day of November, 2019.



JUDGE OF THE SUPERIOR COURT

Original: Cochise County Clerk's Office
P.O. Box CK
Bisbee, AZ 85603

xc: Cochise County Court Administrator
sserrano@courts.az.gov

Danette R. Pahl, Esq.
drpahl@att.net
legalasst4pahl@gmail.com

Nancy Bourke
nbourke36@gmail.com

Joan Sacramento
sacramento.msw.jd@gmail.com

David Morgan
c/o ASU Sandra Day O'Connor College of Law
Gregg P. Leslie
Gregg.Leslie@asu.edu
Alexa Weber
Alweber7@asu.edu
John Dragovits
jdragovi@asu.edu
First Amendment Clinic, Public Interest Law Firm
111 E. Taylor St., Mailcode 8820
Phoenix, AZ 85004